30 Car. 2, Stat. 1, c. 7, about recovery against Executors *de son tort*, continued by 1 Jac. 2, c. 17, s. 14, hereby made perpetual. *Devastavit* lies against Executors by Right.

Scope of Statute.—At common law, if an executor committed a *devastavit* and died, the executor of such executor was not liable for the *devastavit*, for it was a personal *tort* in his testator which died with the person. The effect of the Stat. 30 Car. 2, c. 7, and of 4 & 5 W. & M. c. 24, s. 12, by which the former act is explained and made perpetual, is, that now the executors or administrators of any executor or administrator, whether rightful or of his own wrong, who shall waste or convert to his own use the estate of his testator or intestate, shall be liable and chargeable in the same manner as *their testator would have been, if he **586** had been living.[1] In equity the law was always the same, Price v. Morgan, 2 Ch. Cas. 215, where the Lord Chancellor affirmed that "the common law will come to it at last." But the Bill must state that personal estate of the original testator sufficient for the payment of debts, &c., came to the hands of the executor, and a *devastavit* or misapplication by him, so as to create a liability in his executor to the amount so wasted, and to make his personal estate the fund out of which it is to be paid, West v. Hall, 3 H. & J. 221.

These Statutes are not included by Kilty amongst those proper to be incorporated in our laws. But they were determined to be in force by the Court of Appeals in Sibley v. Williams, 3 G. & J. 52, where it was decided that a creditor,—and the like rule holds as to legatees and next of kin [2]—must for assets wasted pursue their remedy against the executor of the executor; although if the estate of the delinquent executor be deficient, or apparently insolvent, such creditor may ultimately have resort to the testamentary bond; see Iglehart v. the State, 2 G. & J. 235; Dugan v. Hollins, 11 Md. 41.

Administration *de bonis non*.—Before the Act of 1798, ch. 101, the authority of an administrator *de bonis non* [3] was limited to assets un-

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[1] Coates v. Mackie, 43 Md. 128; Wilson v. Hodson, L. R. 7 Ex. 84.

[2] This is an error. In Coates v. Mackie, 43 Md. 128, it was held that this Statute and that of 30 Car. 2, c. 7, extended only to *creditors* and not to legatees; and that where an executor has wasted the assets no action at law will lie for a legacy against his administrator, the sole remedy being in equity.

[3] **Administration *de bonis non*.**—The grant of letters *d. b. n.* is in the exclusive jurisdiction of the Orphans Court. Smith v. Dennis, 33 Md. 442. Where an executor or administrator dies without having made full administration and full distribution of the assets, administration *d. b. n.* is necessary and the title of the distributees can be made in no other way. As long as assets can be found which have not been brought in or accounted for, the estate is not closed and letters *d. b. n.* should be granted. Smith v. Dennis *supra;* Neal v. Charlton, 52 Md. 498; Wilson v. McCarty, 55 Md. 280; Macgill v. Hyatt, 80 Md. 253; Kirby v. State, 51 Md. 383. But where nothing remains to be done to complete the administration, the grant of